

A reference does not anticipate a claim unless (1) the reference discloses all the claim limitations and (2) all of the claim limitations are arranged or combined in the same way as recited in the claim. See Therasence, Inc. v. Becton, Dickinson & Co., 593 F.2d 1325, 93 USPQ2d 1481 (Fed. Cir. 2010), quoting Net MoneyIn, Inc. v. Verisign, Inc., 545 F.3d 1359, 88 USPQ2d 1751 (Fed. Cir. 2008) (Patent claim directed to an internet payment system not anticipated by reference which contained all claim limitations, when two examples had to be combined to produce claimed system). See also Ecolochem, Inc. v. Southern California Edison Co., 227 F.3d 1361, 56 USPQ2D 1065 (Fed. Cir. 2000) (Although reference taught all elements of the claim, it did not contain a discussion suggesting or linking the claim elements and thus did not anticipate claimed invention), and In re Arkley, 455 F.2d 586, 172 USPQ 524 (CCPA 1972) (For anticipation rejection to be proper, "[t]he [prior art] reference must clearly and unequivocally disclose the claimed compound or direct those skilled in the art to the compound without any need for picking, choosing and combining various disclosures not directly related to each other by the teachings of the cited reference.")

Daridon fails to anticipate the claimed assay because the reference does not disclose all of the claim limitations *arranged or combined in the same way as recited in the claim*, Net MoneyIn, supra. In particular, Daridon does not include a discussion or suggestion which links its paragraph [0449] with any of its paragraphs [0246, 0288 and 0307] to disclose the following assay steps in the following arrangement:

retaining biological particles containing an analyte(s) of interest on a filter,

removing the biological particles from the filter by a flush flow in a second direction opposite said first direction, and then

analyzing biological particles contained in the flush flow by means of a nucleic acid amplification assay without any purification.

Instead, the Patent Office has picked isolated disclosures of PCR and improperly combined them with specific features of a microfluidic particle analysis system which are not directly related to one another by the teachings of Daridon to construct the claimed assay, Arkley, supra. Reconsideration and withdrawal of the anticipation rejection of claims 18, 19 and 21-30 over Daridon are requested.

U.S. Patent Appln. S.N. 10/579,137
REQUEST FOR RECONSIDERATION

PATENT

It is believed the application is in condition for allowance. Reconsideration and withdrawal of the rejection of claims 18, 19 and 21-30, and issuance of a Notice of Allowance directed to those claims, are respectfully requested. The Examiner is urged to telephone the undersigned should she believe any further action is required for allowance of this application.

The extension fee is being paid electronically today. It is not believed any additional fee is required for entry and consideration of this Request for Reconsideration. Nevertheless, the Commissioner is authorized to charge Deposit Account No. 50-1258 in the amount of any such required fee.

Respectfully submitted,

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Enclosure:
Petition for Extension of Time